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*Attorneys for Defendants Joseph A Fiore,  
Berkshire Capital Management Company,  
Inc., and Eat at Joe's, Ltd. n/k/a SPYR, Inc.*

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

**SECURITIES AND EXCHANGE  
COMMISSION,**

Plaintiff,

v.

**JOSEPH A. FIORE, BERKSHIRE  
CAPITAL MANAGEMENT COMPANY,  
INC., and EAT AT JOE'S, LTD. n/k/a  
SPYR, INC.,**

Defendants.

Civil Action No. 7:18-cv-05474

**DEFENDANTS' NOTICE OF  
MOTION TO DISMISS**

PLEASE TAKE NOTICE that upon the accompanying Memorandum of Law in support of Defendants' Motion to Dismiss, Declaration of Alex Spiro and exhibits attached thereto (including a copy of Plaintiff's Complaint), and Declaration of Marc S. Gottlieb and exhibits attached thereto, Defendants Joe Fiore, Berkshire Capital Management Company, and Eat at Joe's, Ltd. n/k/a SPYR, Inc. hereby move this Court, before the Honorable Kenneth M. Karas, at

the The Hon. Charles L. Briant Jr. Federal Building and United States Courthouse, 300 Quarropas St., White Plains, NY 10601-4150, for an Order granting Dismissal of Plaintiff Securities and Exchange Commission's Complaint pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure.

Pursuant to this Court's Order (Dkt. 24), Defendants have been granted a page limit of 30 pages, any opposition shall be served on or before December 7, 2018, and Defendants' reply shall be served on or before December 21, 2018.

DATED: New York, New York  
November 2, 2018

By: /s/Alexander Spiro

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Joe's, Ltd. n/k/a SPYR, Inc.*

**CERTIFICATE OF SERVICE**

A copy of the foregoing motion was served on all counsel of record for the parties via ECF on November 2, 2018

/s/Alexander Spiro  
Alexander Spiro